IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

LAND ACQUISITION REFERENCE NO. 13 OF 1983
IN
LAQ 16/DINDOSHI

Special land Acquisition Officer(1)
AND
The Estate Investment Co.P.Ltd .... Claimant

C.M. Korde with Ms. S.R. Moghe i/b. Mehta and Girdharlal for the claimants.
Mr. P.G. Lad for acquiring body.
Ms.S.M. Dandekar and Ors. for SLAO.
Mr. R.J. Mane for SLAO.

CORAM: S.U. KAMDAR, J.

DATE : 1ST MARCH, 2005.

P.C. :

1. Mr. Korde appearing for the claimants state that he does not wish to lead any oral evidence to establish enhanced market value of the land. However he is pressing for 15% additional solatium under section 23 as well as interest under section 28 of the Land Acquisition Act 1894 read with proviso thereto. According to the learned counsel for the

claimant he is entitled to receive the said amount even if he does not press the reference. In so far as enhancement of the market value of the land is concerned, the learned counsel has placed reliance upon the judgment of the learned single judge of this court in LAR No.33 of 1983 dated 5.8.2004 and has contended that the issue raised in the present petition are covered by the judgment of this court.

2. On the other hand Mr. Mane appearing for the SLAO and Mr. P.G. Lad appearing for the acquiring body has contended that the provision of S. 23(2) is not attracted in cases where the claimant do not press their claim for enhanced compensation in a land acquisition reference. The second contention raised by the learned counsel for the respondent is that the provision of section 28 is attracted only in respect of the enhance amount of compensation awarded by the court while determining the fresh marked value of the land in exercise of power conferred under section 18 of the Land Acquistion Act, 1894 and not in respect of claim for additional solatium. Both the aforesaid contention raised by the learned counsel for the

respondents has been clearly dealt with by the learned single judge of this court in LAR no. 33 of 1983 in which the court has expressely held in paras 24, 25 and 26 as under :

> "24. To my mind, upon noticing the judgement of the Constitution Bench of the Supreme court it becomes at once clear that there is no substance in the contention that the court does not make an award when it refuses to enhance the compensation. The basic fallacy in this submission is that the court under section 18 of the Act is required to go into the validity and correctness of the award as if it is sitting in appeal or judgment over it. The nature of the proceedings commenced vide section 18 is by now absolutely clear. The court does not act as a Court of Appeal. What the Court is required to do is to determine the compensation. While doing so, the court does not find out as to whether the SLAO/Collector has erred in determining the compensation by the award. The Court applies its mind to the matter which are required to be taken note of and determine compensation. When the court does not enhance compensation, it does not mean that it makes no award. On the other hand, a combined reading of the provisions of Part II would demonstrate that while disposing of the reference without enhancing the compensation, the Court specified the amount awarded under clause First of section 23(1). It may be that this amount is the same as that determined by the collector. This is so because the Court cannot reduce anything which is awarded by the Collector as compensation. Once, the word "compensation" as explained in the Constitution Bench decision is noted, then the order of the court on the reference is nothing but its award. Once the court upon

reference being forwarded and registered is bound to decide it, in the light of the provisions in Part III of the L.A. Act, then it is clear that this order partakes the character of award.

25. The above aspect becomes further clear if one peruses the decision of the Supreme Court reported in A.I.R. 2002 S.C. 726. In this decision, the issue before the Supreme Court was whether a reference court can dismiss a reference forwarded to it in default of appearance by claimants. Negativing the contention that it could do so, this is what is observed by the Supreme Court :-

> "6. Section 18 of the Act empowers a person interested in the land to move by a written application to the Collector requiring that the matter is referred for determination of the Court, whether his objection be to the measurement of the land, the mount of compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested. If the application for reference is in order the collector is bound to make a reference of it to the court. Section 20 of the Act enjoins on the court to "proceed to determine the objection". The court shall after holding such inquiry as may be necessary pass an award. Section 26 of the Act reads thus:-
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> 26. Form of awards :- (1) Every award under this part shall be in writing signed by the Judge,and shall specify the amount awarded under clause first of sub-seciton (1) of S.23 and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section,

> together with the grounds of awarding each of the said amounts.
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> (2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of S.2 Cl.(2) and S.2 Cl.(9), respectively of the Code of Civil Procedure, 1908. "
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> 7. The provisions above would thus make it clear that the Civil court has to pass an award in answer to the reference made by the Collector under S. 18 of the Act. If any party to whom notice has been served by the Civil Court did not participate in the inquiry it would only be at his risk because an award would be passed perhaps to the detriment of the concerned party. But non-participation of any party would not confer jurisdiction on the civil court to dismiss the reference for default."
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> 26. Therefore, I am unable to accept the submissions of Shri Rajguru that the court does not have jurisdiction to award solatium and interest while disposing of a reference without enhancing the compensation. "

3. The issue as to the interest is also covered by the observation of the learned single judge in the said judgment which is reproduced hereunder :

". Since the reference was pending on 24th September 1984, the entitlement of the claimant before me to solatium is not disputed. Suffice it to state that the purpose of the amendment is to bring on par awards for purposes of payment of higher solatium delivered prior to 24th September 1984 and thereafter. In the instant case, the reference being pending, it is clear that the claimant is entitled to solatium and interest on the same in accordance with section 23(2) and section 28."

4. In view of the decision of the learned single judge, in my opinion the present reference in so far as claim of additional solatium of 15% under section 23(2) of the Act as well as the claim for interest under s. 28 of the Act must succeed. In the aforesaid circumstances, the following order is passed.

(i) that the claimant is entitled to the payment of additional solatium of 15% udner section 23(2) and interest under section 28 at the rate of 9% for the first year from the

date of taking possession and at the rate of 15% thereafter till the payment.

5. In the present case the matter was originally decided by this court by an order judgment dated 18.10.1989 under which additional compensation was awarded in favour of the claimant for the sum of Rs.4,02,817.60/-. The respondents have paid the said amount on 20.2.1990. The matter was thereafter carried in appeal being Appeal no. 494 of 1991 and by an order and judgment dated 8.3.1995 the said award of the learned single judge has been set aside and the matter is remanded back to this court in view of the fact that the claimants have now given up their claim for enhancement of the market value of the land. There is an amount due and payable by the claimant to the state government as and by way of refund of Rs.3,71,164.69/-. with interest at the rate of 10% p.a. The claim of interest as calculated between the parties comesa to Rs.5,53,594.87/-. Thus there is a total due and payable as on 19.1.2005 by

the claimantse to the respondent is Rs.9,24,759.56/-. The claimant shall make the payment of the aforesaid amount with further interest at the rate of 10% p.a. from 19.1.2005 till the date of payment within a period of four weeks after deducting the amount awarded in the present judgment. In an event if the amount is not paid within four weeks the interest will be raised thereafter at the rate of 15% p.a.

6. The L.A.R. is disposed off accordingly with no order as to costs. sd/-

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